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Filing date: **07/31/2013**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91211296
Party	Defendant Miracle Fruit Oil, LLC
Correspondence Address	MIRACLE FRUIT OIL, LLC MIRACLE FRUIT OIL, LLC 1228 ALTON RD MIAMI BEACH, FL 33139-3810  leorez@bellsouth.net
Submission	Motion to Consolidate
Filer's Name	Matthew H. Swyers
Filer's e-mail	mswyers@thetrademarkcompany.com
Signature	/Matthew H. Swyers/
Date	07/31/2013
Attachments	motion to consolidate.pdf(145260 bytes )

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
The Trademark Trial and Appeal Board**

Serial No. 85/733,971

For the mark FRUITYLUSHUS and Design: 

Serial No. 85/732,415

For the mark FRUITYLUSHUS

Cosmetic Warriors Limited

Opposer,

vs.

Miracle Fruit Oil, LLC,

Applicant.

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Opposition No.: 91211296

Opposition No.: 91211294

**MOTION CONSOLIDATE**

COMES NOW Miracle Fruit Oil, LLC as the Applicant in above Opposition Proceeding No. 91211296 and Opposition Proceeding No. 91211294 (hereinafter “Applicant”), by counsel, The Trademark Company, PLLC, and pursuant to § 511 of the TBMP, hereby files the instant Motion to Consolidate in the above-captioned matters. In support thereof, Applicant states as follows:

**Statement of the Case**

Opposer, Cosmetic Warrior Limited, instituted Opposition Proceeding No. 91211296 on or about June 26, 2013 against Applicant’s Federal Trademark Application Serial No. 85/733,971 for the mark FRUITYLUSHUS and Design: .

Opposer, Cosmetic Warrior Limited, instituted Opposition Proceeding No. 91211294 on or about June 26, 2013 against Applicant's Federal Trademark Application Serial No. 85/732,415 for the mark FRUITYLUSHUS

Miracle Fruit Oil, LLC as the Applicant in the above-reference matters, now wishes to consolidate the same into one global action under Opposition No. 91211294.

### **Argument**

In deciding upon a motion to consolidate, the Board should weigh the savings in time, effort, and expense, which may be gained from consolidation, against any prejudice or inconvenience that may be caused thereby. TBMP § 511 (*citing World Hockey Ass'n v. Tudor Metal Products Corp.*, 185 USPQ 246 (TTAB 1975) (consolidation ordered where issues were substantially the same and consolidation would be advantageous to both parties).

Although consolidation is discretionary by the Board, it may be ordered upon a motion granted by the Board or upon a stipulation of the parties approved by the Board. TBMP § 511.

When matters are consolidated, the oldest of the consolidated cases will be treated as the "parent" case and the Board should reset the trial and discovery dates for the consolidated proceeding by adopting the trial dates set in the most recently instituted of the cases being consolidated. TBMP § 511.

Accordingly, all proceedings will involve the same parties and substantially identical questions of law of as well as a significant overlap of the facts supporting the applications of the law to the matters before the Board.

In evaluating the instant motion, Applicant asserts that in the interests of judicial economy the requested consolidation will serve to significantly decrease both the Board's time and effort in presiding over these matters as well as the parties' respective efforts and expense in

prosecuting and/or defending the same. Further, the Trial Order dates are the same in both proceedings. *See World Hockey Ass'n*, 185 USPQ 246.

WHEREFORE for good cause shown it is hereby requested that the instant proceedings be consolidated under the oldest matter, Opposition No. 91211294 and that the trial dates remain as set on the Trial Order.

Respectfully submitted this 31st day of July, 2013.

The Trademark Company, PLLC

/Matthew H. Swyers/  
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Counsel for Applicant

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Opposition No.: 91211296

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I caused a copy of the foregoing this 31<sup>st</sup> day of July 2012, to be served, via first class mail, postage prepaid, upon:

John A. Clifford  
Merchant & Gould PC  
PO Box 2910  
Minneapolis, MN 55402-9944

/Matthew H. Swyers/  
Matthew H. Swyers